

P-421/GR-83-600 ORDER DENYING RECONSIDERATION OF HENRY PETITION  
FOR INTERVENOR COMPENSATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson  
Cynthia A. Kitlinski  
Dee Knaak  
Norma McKanna  
Patrice M. Vick

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition of  
Northwestern Bell Telephone  
Company, Minneapolis, Minnesota  
for Authority to Change its  
Schedule of Telephone Rates for  
Customers within the State of  
Minnesota

ISSUE DATE: March 7, 1991

DOCKET NO. P-421/GR-83-600

ORDER DENYING RECONSIDERATION OF  
HENRY PETITION FOR INTERVENOR  
COMPENSATION

**PROCEDURAL HISTORY**

Evan J. Henry, a semi-retired Certified Public Accountant, intervened in the above-captioned rate case which was filed on September 29, 1983.

On May 3, 1984, Minn. Laws, Chapter 611, went into effect as Minn. Stat. § 237.075, subd. 10. This statute governs intervenor compensation for participation in a telephone company's general rate case. The law applies to expenses incurred after May 3, 1984.

On July 27, 1984, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in the above-captioned rate proceeding. On September 26, 1984, the Commission issued its ORDER AFTER RECONSIDERATION AND REHEARING.

On September 28, 1984, Mr. Henry submitted a request for reimbursement of \$12,424.28 for costs incurred in participating in the rate case as an intervenor prior to May 4, 1984. Mr. Henry also requested recovery of an additional \$6,551.80 in intervenor costs incurred after May 4, 1984.

On November 13, 1984, the Commission issued its ORDER DENYING REIMBURSEMENT OF INTERVENTION COSTS, in which Mr. Henry was denied any recovery of his intervention costs. After Mr. Henry submitted a petition for reconsideration, the Commission issued its ORDER DENYING RECONSIDERATION on January 10, 1985.

Following an appeal of the Commission's November 13, 1984 and January 10, 1985 Orders by Mr. Henry and two other intervenors, the Minnesota Court of Appeals reversed the Commission's denial

of intervenor compensation and remanded the matter to the Commission. The Court of Appeals did, however, affirm the portion of the Commission's Order denying Mr. Henry reimbursement of his expenses incurred prior to May 4, 1984. In the Matter of the Application of Northwestern Bell Telephone Company, 374 N.W.2d 758 (Minn. App. 1985).

On May 9, 1986, the Minnesota Supreme Court reversed the Court of Appeals with respect to the other two intervenors, but affirmed the Court of Appeals with regard to Mr. Henry's request for intervenor compensation. The case was remanded to the Commission for reconsideration. Application of Northwestern Bell Telephone Company, 386 N.W.2d 723 (Minn. 1986).

On April 3, 1987, the Commission issued its ORDER AFTER REDELIBERATION. Northwestern Bell appealed this Order to the Minnesota Court of Appeals and then to the Minnesota Supreme Court, which denied further review.

On May 12, 1989, the Commission solicited comments regarding Mr. Henry's request for intervenor compensation.

On July 10, 1989, the Commission issued its ORDER DENYING INTERVENOR COMPENSATION. In this Order, the Commission denied Mr. Henry recovery because he did not meet the statutory requirement of insufficient financial resources to afford the costs of intervention. The Commission also based its denial upon the fact that Mr. Henry began his participation in the rate case prior to the passage of Minn. Stat. § 237.075, subd. 10, when he could not have had a reasonable expectation of compensation.

On July 11, 1990, Mr. Henry submitted a letter requesting that the Commission rescind its July 10, 1989 Order and grant Mr. Henry a contested case hearing. On July 17, 1990, Mr. Henry submitted a second letter requesting a contested case hearing.

Northwestern Bell filed a responsive letter on October 1, 1990. In the letter Northwestern Bell urged the Commission to deny Mr. Henry's requests.

The Commission met to consider the matter on December 18, 1990.

### **FINDINGS AND CONCLUSIONS**

Minn. Rules, Part 7830.4100 states in part: "Within 20 days from the date of the mailing by the secretary of the final decision or order, any party may petition for a rehearing, or for an amendment or vacation of the findings of fact, decision or order, or for reconsideration or reargument." Thus, the Commission

would have to have received a petition for reconsideration of the Commission's July 10, 1989 Order on or before July 31, 1989 (July 30 being a Sunday) in order to have found it timely. Mr. Henry's letter requesting reconsideration was received by the Commission on July 11, 1990, nearly one year too late. The Commission will not accept this untimely petition.

Even if the petition had been filed in a timely fashion, Mr. Henry raises no arguments which would warrant reconsideration. The Commission addressed the material issues of fact surrounding Mr. Henry's intervention in its July 10, 1989 Order. Having fully considered the record and comments and arguments of the parties, the Commission found that Mr. Henry should not be compensated because he did not demonstrate financial need. In his present request for reconsideration, Mr. Henry has raised absolutely no new material facts upon which to base the need for reconsideration.

No contested case proceeding is required under the intervenor compensation statute, Minn. Stat. § 237.075, subd. 10, or by the newly adopted Commission rules governing intervenor compensation, Minn. Rules, Parts 7831.0100 to 7831.0800. Neither will the Commission initiate a contested case proceeding in its own discretion, because no significant factual issue has been raised by Mr. Henry.

The Commission will deny Mr. Henry's request for reconsideration or a contested case proceeding.

#### ORDER

1. Mr. Evan J. Henry's July 11, 1990 petition for reconsideration of the Commission's July 10, 1989 Order in this docket, and his petition for a contested case proceeding, are hereby denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)